



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Wright

Serial No.: 09/767,014

Group No.: 3628

Filed: January 22, 2001

Examiner: Debra Charles

For: INSTANTANEOUS INTERNET CHARGING

APPELLANT'S REQUEST FOR REINSTATEMENT OF THE APPEAL

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed September 6, 2005, Applicant hereby elects the Examiner's Option 2), which is to request reinstatement of the appeal for the subject application. Attached hereto is Appellant's Supplemental Appeal Brief for consideration of the Examiner.

Respectfully submitted,

By: _____

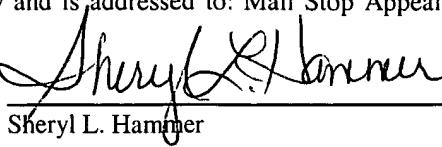
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Date: Dec. 6, 2005

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date indicated below and is addressed to: Mail Stop Appeal Brief, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

Date: Dec. 6, 2005



Sheryl L. Hammer



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APPELLANT'S SUPPLEMENTAL BRIEF UNDER 37 CFR §1.192

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is Carl A. Wright, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 24 claims. Claims 1-9 were canceled by amendment in June 2005. Claims 10-24 are pending, rejected and under appeal. Claim 10 is the sole independent claim.

**IV. Status of Amendments Filed Subsequent
Final Rejection**

An after-final amendment was filed canceling claims 1-9.

V. Summary of Claimed Subject Matter

Independent claim 10 is directed to a method for providing timely information related to usage of an Internet service. The method includes the step of providing measured units of Internet service to one or more users: The measured units are tallied as they are consumed by one or more users and a rate per measured unit of Internet service is assessed. The method further includes the steps of calculating a price associated with the consumed measured units of Internet service by multiplying the tally of measured units of Internet service with the assessed rate, and forwarding, within a close time proximity to the consumption of the measured units of Internet service by one or more users, information via a communication link to a designated location, where the information includes at least one of the tally of the measured unit of Internet service, the assessed rated, and the calculated price (Specification page 6, line 10 to page 8 line 16; Figures 1 and 2).

VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

A. The rejection of claims 10 - 24¹ under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,122,603 to Budike et al.

VII. Arguments**A. The Rejection of Claim 10.**

Claim 10 stands rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,122,603 to Budike, Jr. Claim 10 resides in a method for providing information related to the usage of the Internet *itself*, and not just the *use* of the Internet for routine communication purposes.

The steps of claim 10 are directed to the measurement and assessment of this usage of the Internet. Note the steps of “tallying the measured units of Internet service provided to one or more users as the measured units of Internet service are consumed by one or more users; assessing a rate per measured unit of Internet service consumed by one or more users as the measured units are tallied; calculating a price associated with the consumed measured units of Internet service by multiplying the tally of measured units of Internet service with the assessed rate; and forwarding ...

¹ On page 2 of the most recent Office Action, the Examiner states that only claim 10 is rejected; Appellant assumes this is just a typo.

information [which] includes at least one of the tally of the measured unit of Internet service, the assessed rated, and the calculated price (Emphasis added).

Budike, Jr. is entirely different. Budike, Jr. has to do with the consumption of energy, not Internet bandwidth. As with previous rejections, the Examiner misses the point. The Examiner seems to be arguing that because Budike, Jr. *uses* the Internet, the steps of Appellant's method are obvious. But this is not the case. Appellant's invention doesn't just *use the Internet*, but rather, represents a method (and system) for real-time or near real-time presentation of usage, rate, and billing account information related to the consumption of Internet services (by one or more users). The system of Budike, Jr. does nothing of the kind. The Examiner's only argument is that, in Budike, "the communication link is an internet link." (OA, p. 3) Appellant's response is: "So? Many services *use* the Internet, but that is insufficient to establish *prima facie* obviousness unless the elements of a claim are met, which they are not.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP §2143). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In this case, the Examiner has met none of these directives.

B. The rejection of claim 11.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

C. The rejection of claim 12.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

D. The rejection of claim 13.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

E. The rejection of claim 14.

Although the Examiner does not give the claim by claim number, the Examiner appears to reject claim 14 on the grounds that “wireless technology is old and well-known in the communications arts. Thus, it would have been obvious to one of an ordinary level of skill in the art to employ wireless technology to get the benefit of mobile internet access and metered pricing data.”

As best understood by Appellant, however, given that the only cited reference fails to disclose, teach or suggest the charging and metered usage of *Internet services*, the Examiner’s argument does not apply.

F. The rejection of claim 15.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

G. The rejection of claim 16.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

H. The rejection of claim 17.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

I. The rejection of claim 18.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

J. The rejection of claim 19.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

K. The rejection of claim 20.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

L. The rejection of claim 21.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

M. The rejection of claim 22.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

N. The rejection of claim 23.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

O. The rejection of claim 24.

Since the Examiner provides no specific arguments or prior-art references with respect to the limitations of this claim, it is presumed to be allowable.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: _____

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Date: Dec. 6, 2005

APPENDIX A**CLAIMS ON APPEAL**

10. A method for providing timely information related to usage of an Internet service, the method comprising the steps of:

providing measured units of Internet service to one or more users;

tallying the measured units of Internet service provided to one or more users as the measured units of Internet service are consumed by one or more users;

assessing a rate per measured unit of Internet service consumed by one or more users as the measured units are tallied;

calculating a price associated with the consumed measured units of Internet service by multiplying the tally of measured units of Internet service with the assessed rate; and

forwarding, within a close time proximity to the consumption of the measured units of Internet service by one or more users, information via a communication link to a designated location, where the information includes at least one of the tally of the measured unit of Internet service, the assessed rated, and the calculated price.

11. The method according to claim 10, further comprising an initial step of accessing, by one or more users, a connection device connected to the Internet.

12. The method according to claim 11, wherein the connection device further comprises a display device.

13. The method according to claim 12, wherein the display device further comprises a telephone.

14. The method according to claim 13, wherein the telephone utilizes wireless technology.

15. The method according to claim 11, further comprising a final step of displaying the forwarded information on the display device accessed by the user.

16. The method according to claim 10, wherein the forwarded information further comprises the tally, the assessed rate, and the calculated price associated with the consumed measured units of Internet service.

17. The method according to claim 10, wherein the communication link further comprises the Internet.

18. The method according to claim 10, further comprising the step of purchasing the Internet service prior to providing measured units of Internet service to one or more users.

19. The method according to claim 18, wherein the forwarded information further comprises data relating to the purchased Internet service not yet consumed.

20. The method according to claim 10, wherein the forwarded information further comprising identification of one or more of the users of the Internet services.

21. The method according to claim 10, further comprising a step of estimating an expense associated with a particular Internet service prior to consumption of the particular Internet service.

22. The method according to claim 10, further comprising a step of requesting payment of the calculated price for consumed Internet services.

23. The method according to claim 10, further comprising a step of collecting the calculated price for consumed Internet services.

24. The method according to claim 10, further comprising a step of discounting the

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calculated price according to a predetermined criterion.

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APPENDIX B

EVIDENCE

None.

APPENDIX C
RELATED PROCEEDINGS

None.